

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:19-cv-00272

MAXWELL KADEL; JASON FLECK;
CONNOR THONEN-FLECK, by his
next friends and parents, JASON FLECK
and ALEXIS THONEN; JULIA
MCKEOWN; MICHAL D. BUNTING,
JR.; C.B., by his next friends and parents,
MICHAEL D. BUNTING, JR. and
SHELLEY K. BUNTING; and SAM
SILVAINE,

Plaintiffs,

v.

DALE FOLWELL, in his official
capacity as State Treasurer of North
Carolina; DEE JONES, in her official
capacity as Executive Administrator of
the North Carolina State Health Plan for
Teachers and State Employees;
UNIVERSITY OF NORTH CAROLINA
AT CHAPEL HILL; NORTH
CAROLINA STATE UNIVERSITY;
UNIVERSITY OF NORTH CAROLINA
AT GREENSBORO; and NORTH
CAROLINA STATE HEALTH PLAN
FOR TEACHERS AND STATE
EMPLOYEES,

Defendants.

**MOTION FOR
EXTENSION OF TIME AND
MOTION TO JOIN BRIEFING
SCHEDULE**

Pursuant to Fed. R. Civ. P. 6(b) and L.R. 6.1(a), Defendants DALE FOLWELL, in his official capacity as State Treasurer of North Carolina, DEE JONES, in her official

capacity as Executive Administrator of the North Carolina State Health Plan for Teachers and State Employees, and NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES (“SHP”) (“SHP Defendants”), and the UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, NORTH CAROLINA STATE UNIVERSITY, and the UNIVERSITY OF NORTH CAROLINA AT GREENSBORO (“University Defendants”, or collectively with SHP Defendants “Defendants”) hereby request an extension of time, through and including July 8, 2019, within which to file and serve their answers or other appropriate responses to the Complaint in the above-referenced matter. In support of this motion, Defendants show unto the Court the following:

1. Plaintiffs filed their Complaint on March 11, 2019. [ECF No. 1]
2. Plaintiffs served waivers of service of summons upon Defendants on or about March 13, 2019.
3. Defendants, through the North Carolina Department of Justice, returned duly executed copies of waiver of service forms, setting a response date of May 13, 2019. [ECF Nos. 9-14]
4. On April 22, 2019, the North Carolina Department of Justice informed the SHP Defendants that the Department is unable to represent the SHP Defendants in this matter.
5. On May 6, 2019, Special Deputy Attorney General Olga E. Vysotskaya de Brito of the North Carolina Attorney General’s Office entered a Notice of Limited

Appearance on behalf of the SHP Defendants for the limited purpose of moving for an extension of time to answer or otherwise plead, while the SHP Defendants retained counsel to represent them in this matter. [ECF No. 19]

6. On May 6, 2019, Ms. Vysotskaya, on behalf of the Defendants, moved for an extension of time, through and including June 12, 2019, within which to respond to the Complaint, which the Court granted. [ECF No. 20].

7. Pursuant to N.C. Stat. 147-17(a), the Defendants consulted with the Governor of North Carolina for permission to seek alternative legal representation. Permission was granted by the Governor on May 15, 2019.

8. SHP Defendants retained the undersigned counsel last week, together with out-of-state counsel, John G. Knepper, who will appear in this matter by Special Appearance, pursuant to L.R. 83.1(d).

9. University Defendants received an extension of time on May 8, 2019, to file a responsive pleading on or before June 12, 2019.

10. Defendants respectfully request that they have additional time, through and including July 8, 2019, for counsel to investigate and respond to the allegations in the Complaint.

11. Should the Defendants file a motion to dismiss Plaintiffs' Complaint, the parties request that the Court adopt the following briefing schedule:

- July 8, 2019 – Defendants' Motion to Dismiss and Brief due.
- August 5, 2019 – Plaintiffs' Brief in Response to Motion to Dismiss due.

- August 19, 2019 – Defendants’ Reply Brief due.

12. The time for Defendants to file and serve an Answer or other response to the Complaint has not passed.

13. Defendants seek the extension requested herein for good cause and do not seek an extension for any improper purpose.

14. On Friday, June 7, 2019, Defendants filed a motion for extension of time stating that Plaintiffs take no position concerning SHP Defendants’ request, but object to University Defendants’ request.

15. After filing the motion, counsel for Plaintiffs and University Defendants conferred further, and Plaintiffs take no position as to the requested extension for both SHP Defendants and University Defendants, provided that, if the Court grants the Defendants’ requested extension, the Plaintiffs receive until August 5, 2019, as contemplated in the proposed briefing schedule requested herein.

WHEREFORE, Defendants respectfully request that the Court grant an extension of time, through and including July 8, 2019, within which to serve and file their Answers or other appropriate responses to the Complaint.

This the 10th day of June, 2019.

Respectfully submitted by,

/s/Catherine F. Jordan
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

This the 10th day of June, 2019.

/s/ Catherine F. Jordan
Catherine F. Jordan
Special Deputy Attorney General